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(g) *Approval.* (1) Factors that will be considered are:

(i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions;

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound operation of a Federal savings association; and

(vi) Whether the factors set forth in § 543.3 are met, in the case of an application that would result in the formation of a *de novo* association, as defined in § 543.3(a).

(2) Approvals of applications will be conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the Federal savings association will be insured by the Federal Deposit Insurance Corporation;

(ii) A minimum amount of capital to be paid into the association's accounts prior to commencing business;

(iii) The submission of a statement that—

(A) The applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal savings association;

(B) The applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred;

(C) No funds have been collected on account of the association before the Office's approval;

(D) An organization committee has been created (naming the committee and its officers);

(E) The committee will organize the association and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6 of this part; and

(F) No funds will be accepted for deposit by the association until organization has been completed; and

(iv) The satisfaction of any other requirement the Director, or his or her designee, may impose.

(h) *Alternative procedures for interim Federal savings associations.* (1) Applications for permission to organize an interim Federal savings association are not subject to paragraphs (d), (e), (f) or (g)(2) of this section.

(2) Approval of an application for permission to organize an interim Federal savings association shall be conditioned on approval by the Office of an application to merge the interim Federal savings association and an existing insured stock association or on approval by the Office of such other transaction which the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in section § 543.2(g)(1) to the extent relevant.

[54 FR 49482, Nov. 30, 1989, as amended at 55 FR 13510, Apr. 11, 1990; 57 FR 14338, Apr. 20, 1992; 62 FR 27180, May 19, 1997; 62 FR 64145, Dec. 4, 1997; 69 FR 68247, Nov. 24, 2004]

§ 543.3 “De novo” applications for a Federal savings association charter.

(a) *Definitions.* For purposes of this section, the term “*de novo* association” means any Federal savings association chartered by the Office, the business of which has not been conducted previously under any charter or conducted in the previous three years in substantially the same form as is proposed by the *de novo* association. A “*de novo* applicant” means any person or persons who apply to establish a *de novo* association.

(b) *Minimum initial capitalization.* (1) A *de novo* association must have at least two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the

amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* association, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* association that has less than two million dollars in initial capital or may require a *de novo* association to have more than two million dollars in initial capital.

(c) *Business and investment plans of de novo associations.* (1) To assist the Office in making the determinations required under section 5(e) of the Home Owners' Loan Act, a *de novo* applicant shall submit a business plan describing, for the first three years of operation of the *de novo* association, the major areas of operation, including:

- (i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements;
- (ii) Deposit, savings and borrowing activity;
- (iii) Interest-rate risk management;
- (iv) Internal controls and procedures;
- (v) Plans for meeting the credit needs of the proposed *de novo* association's community (including low- and moderate-income neighborhoods);
- (vi) Projected statements of condition;
- (vii) Projected statements of operations; and
- (viii) Any other information requested by the Office.

(2) The business plan shall:

- (i) Provide for the continuation or succession of competent management subject to the approval of the Regional Director;
- (ii) Provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director;
- (iii) Demonstrate the *de novo* association's ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the savings association is located. The Office generally will consider a director to be representative of the state if the director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the board of directors of the holding company.

(e) *Management Officials.* Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual or group of individuals acting in concert under 12 CFR part 574, who owns or proposes

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to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report, on forms prescribed by the Office, to the Regional Director.

(f) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with applications for Federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers, holding company reorganizations, or similar transactions.

[62 FR 27180, May 19, 1997; 62 FR 28983, May 29, 1997]

§ 543.5 Issuance of charter.

Approval by the Office of the organization of a Federal savings association or the conversion of an insured association to Federal savings association form shall constitute issuance of a charter and shall be final, provided that the association complies with the procedures set out at § 544.2(a) of this chapter. The charter shall conform with the requirements of § 544.1 of this chapter, the permissible provisions of § 544.2, or other provisions specifically approved by the Office.

§ 543.6 Completion of organization.

(a)(1) *Temporary officers.* When the Office approves an application for permission to organize a Federal savings association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Office.

(2) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the

association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in parts 544 and 552 of this chapter.

(b) *First meeting of directors.* Upon election, the association's board of directors shall hold a meeting to elect officers of the association as provided by its charter and bylaws and to take any other action necessary to permit operation of the association in accordance with law, the association's charter and bylaws, and these rules and regulations. When such officers have been bonded under § 563.190 of this chapter, they shall immediately collect the sums due on subscriptions to the association's capital.

(c) *Membership in Federal Home Loan Bank and insurance of accounts.* When a Federal savings association's charter is issued it must promptly qualify as a member of a Federal Home Loan Bank and meet all requirements necessary to obtain insurance of its accounts by the Federal Deposit Insurance Corporation.

(d) *Failure to complete.* Organization of a Federal savings association is completed when the organization meeting and the first meeting of its directors have been held, permanent officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, if required, Federal Home Loan Bank membership has been obtained and Federal Deposit Insurance Corporation insurance of accounts has been confirmed and any conditions imposed by the Office in connection with approval of the application have been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Director or his or her designee may for good cause grant, and in the case of an interim Federal savings association, if a merger, or other transaction facilitated by the existence of an interim association, has not been approved, the charter shall become void and all cash